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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/549,422

09/15/2005

Jose Luiz Whitaker Ribeiro

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EXAMINER

KWIECINSKI, RYAN D

ART UNIT

PAPER NUMBER

3635

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/549,422	Applicant(s) RIBIERO, JOSE LUIZ WHITAKER	
	Examiner RYAN D. KWIECINSKI	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 July 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/7/2008</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 25-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 25, lines 1-2, the recitation “the lengthwise metallic beams which comprise said base structure are provided by” is very vague, indefinite, and confusing. It is unclear whether the Applicant is trying to claim said base structure which is comprised of the lengthwise metallic beams or if the Applicant is claiming something entirely different. If so it is unclear what “the lengthwise metallic beams are provided by top joining beams” means. Are the length wise beams different lengths? Are there lengthwise beams and top joining beams? or are the lengthwise beams the top joining beams?

The claims have been examined as best understood.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19, 21-23, and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,177,614 to Arp in view of US 6,647,562 B1 to Arout et al. in view of US 3,629,985 to Ueno.

Claim 19.

Arp discloses a modular pool, comprising one or more superposed tiers of modular panels (15, Fig.4 and Fig.5) adjacently interconnected so as to form side walls, said modular panels comprising a central vertical rectangular portion (16, Fig.5) with flanges along its horizontal and vertical edges (17, 18, 19, and 20), wherein the flanges along the upper and lower sides of said rectangular portion are at right angles (Fig.5) to said rectangular portion such that the bottom flanges of the modular panels of the lower tier are attached by semi-permanent attaching means (30,31, Fig.5) to a base structure (40).

Arp does not disclose metallic modular panels nor does Arp disclose a modular pool comprising a plurality of metallic sleepers placed crosswise at right angles to a plurality of parallel lengthwise metallic beams, said metallic sleepers and said beams being "U" section shaped with the central portion being vertically oriented.

Arout et al. disclose metallic modular panels (Column 5, lines 55-60).

Ueno discloses a lattice base structure (the beams in Fig.11; and cross beams 6' in Fig.9) comprising a plurality of metallic sleepers placed crosswise at right angles to a plurality of parallel lengthwise metallic beams (Beams in Fig.11), said metallic sleepers and said beams being "U" section shaped with the central portion being vertically oriented)the vertical web of the beams in Fig.11).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the panels from a metallic material. Forming panels from metals will result in structurally sound modular system that is capable for undergoing very large stresses. Metals are known for their rigidity, durability, and strength. It is obvious to form the panels of Arp from a metal since the metal is capable of undergoing the stresses that are sustained by the panels of Arp.

It also would have been obvious to have formed a lattice base structure out of U-shaped beams in order to provide a sturdy, strong, rigid base for the modular panels and modular pool system. The rigid base structure formed from a lattice comprising metal beams is notoriously well known in the art. Base and floor systems are routinely formed from lattice base structures in order to support a large load applied to the base structure.

Claim 21.

Arp in view of Arout et al. in view of Ueno discloses the modular pool of claim 19, Ueno also discloses wherein the bottom of the pool comprises a plurality of metallic

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modular tiles (9, Fig.9) whose ends are placed upon the upper flanges of said sleepers (6') of said base structure, said modular tiles forming a substantially plane surface (Fig.9).

Claim 22.

Arp in view of Arout et al. in view of Ueno discloses the modular pool of claim 19, Arp also discloses wherein each modular wall panel comprises a flange along at least one of the vertical sides of said central portion and bent at a right angle in relation to the central portion (19, 20, Fig.4).

Claim 23.

Arp in view of Arout et al. in view of Ueno discloses the modular pool of claim 19, Arout et al. also disclose wherein each modular wall panel comprises a flange along at least one of the vertical sides of said central portion, bent at an angle different than 90° in relation to the central portion (31,32, Fig.3).

Claim 25.

Arp in view of Arout et al. in view of Ueno discloses the modular pool of claim 19, Ueno also discloses wherein the lengthwise metallic beams which comprise said base structure are provided by top joining beams (6', Fig.9; the beams 6' are shorter than the beams in Fig.11) of shorter lengths.

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Claim 26.

Arp in view of Arout et al. in view of Ueno discloses the modular pool of claim 25, Ueno does not specifically disclose wherein said shorter beams have a maximum length of 2 meters, but it would have been an obvious choice of engineering design to have formed the top joining members with lengths less than 2 meters if lengths less than 2 meters were capable of holding up to the loads of the structure which will be placed above the structure. The shorter length beams will form a lattice base structure with a stronger, more rigid, lattice which will in turn support a larger load applied to the base. The shorter members prevent bends in the beams and resist the bending from torque, etc.

Claim 27.

Arp in view of Arout et al. in view of Ueno discloses the modular pool of claim 19, Arp also discloses wherein said semi-permanent attaching means comprise nuts and bolts (30, 31).

Claim 20 is are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,177,614 to Arp in view of US 6,647,562 B1 to Arout et al. in view of US 3,629,985 to Ueno in view of US 5,239,798 to Saito.

Claim 20.

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Arp in view of Arout et al. in view of Ueno discloses the modular pool of claim 19, but does not disclose wherein said semi-permanent attaching means comprise angle iron type beams whose vertical flanges are attached to the perimeter beams of said base structure and over whose horizontal flanges are juxtaposed the lower flanges of the lower modular panels of the walls.

Saito discloses a semi-permanent attaching means comprise angle iron type beams (85, Fig.3A; 74, Fig.3A).

Saito does not specifically disclose the orientation of the angle iron.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used an angle iron member to secure the modular panels to the lattice base structure. Angle iron structures are notoriously well known for attaching different structures at 90 degree angles. It also would have been obvious to have used the orientation of the angle iron structure with the vertical portion attached to the base structure and the horizontal portion securing the flange of the modular wall. The angle iron structure can be installed in multiple configurations which will rigidly secure the modular wall panel to the base structure lattice.

Claim 20 is are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,177,614 to Arp in view of US 6,647,562 B1 to Arout et al. in view of US 3,629,985 to Ueno in view of US 5,791,098 to Thomas.

Claim 24.

Arp in view of Arout et al. in view of Ueno discloses the modular pool of claim 21, but does not disclose wherein at least one of said metallic tiles includes a central opening for a drain in the bottom.

Thomas discloses including a central opening (47, Fig. 1) for a drain in the bottom.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed a metallic panel on the base with an opening for a drain since it is well known that pools contain means to drain water. An opening for a drain included in the tile will eliminate any necessity to cut or drill out holes on site for a drain in the pool.

Response to Arguments

Applicant's arguments with respect to claims 19-27 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RYAN D. KWIECINSKI whose telephone number is (571)272-5160. The examiner can normally be reached on Monday - Friday from 9 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Basil Katcheves can be reached on (571)272-6846. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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RDK

/Ryan D Kwiecinski/
Examiner, Art Unit 3635
/Basil Katcheves/
Primary Examiner, Art Unit 3635